

Information and its role in the Russian labor law

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Abstract: The article analyzes the term information and its usage in the Russian labor law. The author notes that different synonyms are used in the labor law of the Russian Federation, particularly, the concepts of information, intelligence and data. The author describes various classifications of information, such as classifications based on institutes and subjects of the labor law, as well as based on availability of information. Moreover, the role of information in the Russian labor law is demonstrated.

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Introduction

In the era of globalization information gains more and more importance. With development of technologies the transmission of information becomes easier that makes possible the remote work and other forms of atypical employment [1]. According to research study flexible working arrangements, including atypical employment, have proliferated throughout the world [2, 3, 4]. As it was noted in the comparative analytical report on EU Countries “developing these forms of work is considered necessary for achieving economic growth through the adaptation of business strategies and productivity to globalized markets and economies” [2].

However the majority of scholars hold the opinion that negative trend formed on usage of atypical forms of employment [5, 6, 7]. Indeed, atypical employees are disadvantaged “by their weaker protections under employment protection legislation, are often not part of unions, have weaker worker safety protections, no overtime pay, sometimes minimum wage does not apply to them, and they have lower compensation on average, although there are small occupational subgroups of atypical workers that earn more” [7]. On the other hand such forms of employment “indicate greater labor market flexibility” [6] and give chances to be employed for people who cannot work under ordinary conditions.

The legislative definition of information is provided in Art. 2 of the Federal law of July 27, 2006 “On information, information technologies and information security”, according to which information is “intelligence (messages, data) in irrespective of a form of its representation” [8].

Information occupies an important place in all branches of jurisprudence and basic regulations on it can be found in the Russian Constitution [9].

Furthermore, the fourth part of the Russian Civil Code is completely devoted to the legal regulation of information [10], as far as the national Criminal Code provides criminal liability for illegal receiving and disclosure of information classified as trade secret, tax or bank secrecy [11].

Besides, a number of special inter-branch character laws regulating receive, use of information and information security have been passed, for example, the Federal law of July 29, 2004 “On a trade secret”; the Federal law of July 27, 2006 “On personal data”; the Federal law of February 9, 2009 “On ensuring access to information on activity of government bodies and local governments”, etc.

All above-mentioned topic gains increasing value in the labor law nowadays. The Russian Labor code contains the definition of “**information**” (mentioned in more than 26 articles of the Code). In some cases (see Arts. 21, 22 and 219 of the Code) the legislator specifies that an employer must provide “reliable information” to an employee [12]. Art. 53 of the Code provides that receipt of information affecting the interests of the employees from the employer is one form of employees’ participation in management of the organization [12].

Except the term “information”, the Russian Labor code also uses the concept “**data**” (mentioned in more than 7 articles of the Code). According to Art. 37 of the Code disclosure of the data received during collective negotiations and relating to secret protected by the law (state, official, trade and other), is forbidden and disciplinary, administrative, civil and criminal liability is provided for their disclosure [12].

In addition to the abovementioned terms, the definition “**intelligence**” (mentioned in more than 16 articles of the Code) is applied. This term is generally used in relation to personal data of the employee. For example, Art. 86 of the Labor code establishes the

general rules for processing personal data of the employee while Art. 89 of the Code lists the rights of the employees that they are allocated with for ensuring protection of the personal data that is held by the employer [12].

It is worth mentioning that protection of employee's personal data is of great significance both in national and international levels. For example, International labor organization published a code of practice "Protection of workers' personal data" in order to provide guidance on the protection of employee's personal data [13]. Besides, there are other international instruments concerning personal data, including binding ones, in particular the Council of Europe's 1981 Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data, the OECD's 1980 Guidelines on the Protection of Privacy and Transborder Flows of Personal Data, the 1995 European Union Directive on the protection of individuals with regard to the processing of personal data. These documents "reflects the conviction that the systematic collection and retrieval of personal data has far-reaching consequences" [13].

According to the opinion of A. Lushnikov and M. Lushnikova the issues of personal data should be considered in the context of problems related to information law; moreover, the legislation of the Russian Federation on personal data should be harmonized [14].

Thus, while making research on legal regulation of information in the Russian Labor law, the different terms, such as "information", "intelligence" and "data" should be taken into account. These concepts in total give more complete understanding of a role of information in the labor law.

It is clear from the aforesaid that the Labor code contains many mentions of information that cover almost all institutes of the labor law. Respectively, information in the Labor code can be classified by institutes of the labor law which they are related to, for example, information in the institute of social partnership, institute of employment contract, institute of labor protection, etc.

Thus, Arts. 21, 22 of the Labor code are devoted to the labor relations and subjects of the labor relations, in particular these articles establish the rights and duties of the employee and the employer, including the right of the employees to information and a duty of the employers to provide this information [12].

In the sphere of social partnership the information is necessary for collective bargaining. For example, Art. 37 of the Code provides that the parties must provide information to each other for the

purposes of collective bargaining no later than two weeks from the date of receiving the corresponding inquiry [12].

The term "information" is also can be found in the sphere of the employment contract. It is specified in Art. 57 of the Russian Labor code that the non-inclusion of any data in the employment contract is not the basis for its recognition as unconcluded or its cancellation, but the employment contract must be supplemented with missing information [12].

Information in the field of labor protection is mentioned in several articles of the Labor code of the Russian Federation. According to Art. 212 of the Code the duties of the employer on providing safe conditions and labor protection include a duty on providing information and the documents concerning labor protection to special state bodies, and also to bodies of trade-union control [12].

The institute of liability for damages also contains reference to information. According to Art. 243 of the Code full liability for damages is imposed on the employee in case of disclosure of information relating to secret protected by the law (state, official, trade and other) when this is directly provided by federal laws [12].

Some peculiarities of the labor regulation connected with information are established in the Labor code regarding certain categories of employees. In particular, additional information (data on the income, property and obligations of property character, as well as on the income, property and obligations of property character of the spouse and minor children) must be provided before concluding the employment contract with the persons appointed to a position of the head of the public (municipal) institution (Art. 275 of the Code) [12] and the employees of the state corporation or the state company (Art. 349.1 of the Code) [12].

The institute of protection of the labor rights of the employees contains the concept "information". Under Art. 357 of the Russian Labor code labor inspectors have a right to request documents, explanations, information from the employers and their representatives, executive authorities and local governments [12].

In the sphere of settlement of labor disputes the term "information" can be found in Arts. 397, 411 of the Russian Labor code. According to Art. 411 of the Code the body heading a strike has the right to receive information from the employer on the issues affecting the interests of the employees [12].

It should be noted that the right to information belongs not only to the employee, but also to the employer. Moreover, some state bodies, for example, labor inspection or authorities for

settlement of disputes, have the right to information that is necessary to carry out their activity. Therefrom it is possible to divide information over the entitlement the employee, the employer or other subjects of the labor law.

The general rules on the right of the employees to information are enshrined in Art. 21 of the Russian Labor code [12]. The right of the employer to information concerns additional information which certain categories of the employees, such as the heads of the public (municipal) institution (Art. 275 of the Code) [12], the employees of the state corporation or the state company (Art. 349.1 of the Code) [12] must provide.

As noted above, some bodies have the right to information that is necessary to carry out their activity, in particular, this right extends to labor inspectors (Art. 357 of the Code) [12], bodies of trade-union control (Art. 370 of the Code) [12], intermediaries (Art. 403 of the Code) [12] and labor arbitration (Art. 404 of the Code) [12] when dealing with collective labor disputes, as well as the body heading a strike (Art. 411 of the Code) [12].

It should be noted that the right of the employees to information has the general character, whereas the right of the employers and other bodies or officials to information has special character and relates to individual cases or certain categories of the employees.

Besides, information in the Russian labor law can be classified depending on whether it concerns general cases, individual cases or certain employees. For example, the right of the employees enshrined in Art. 89 of the Code is considered as a general case [12]. Under Art. 89 of the Code the employees have the right to full information on their personal data and processing of these data for ensuring protection of the personal data which is held by the employer [12].

The information on labor protection (Arts. 212, 216, 219 of the Code) [12], accidents (Art. 229.2 of the Code) [12], nuclear and radiation safety (Art. 369 of the Code) [12] is related to individual cases. For instance, Art. 369 of the Labor code of the Russian Federation establishes a duty of officials of the federal executive authorities exercising state supervision over observance of requirements of nuclear and radiation safety to inform the employees and the employers on violation of standards of nuclear and radiation safety [12].

Information also can concern certain employees, for example, remote employees (Arts. 312.1, 312.2, 312.3 of the Code) [12], athletes (Art. 348.2 of the Code) [12].

Recently new chapter concerning remote employees has been included into the Labor code of

the Russian Federation. According to Art. 312.1 of the Code remote work is characterized by two signs: a) work performance out of the location of the employer; b) use of public information and telecommunication networks, including the Internet networks, for performance of labor function and for interaction between the employer and the employee [12]. In other words, information has even bigger value for remote employees as communication of the employee with the employer takes place through information and telecommunication networks.

The expansion of remote employment is dictated by demands of the times. However remote work has certain shortcomings:

1. "feelings of isolation may arise for employees due to their lack of interaction with others;
2. virtual arrangements may be excluded from developmental opportunities that are otherwise available to employees who have greater face-to-face presence in the workplace;
3. virtual workers tend to work longer hours at home than they do in the office;
4. a possible insufficient workspace at home;
5. employees tend to have difficulty separating their work and life and often face distractions from their home life", etc. [15].

It is also worth noting that remote employees should have certain characteristics in order to work successfully. Such characteristics include, inter alia, "being self-motivated and self-disciplined, having effective communication skills, being technologically competent and results-oriented, resourcefulness, possessing strong time management skills, as well as self-efficacy, technological skills, and strong communication skills" [15]. Therefore remote employment could be an unsuitable option for people who have difficulties with arranging their work, although as a whole availability of remote employment contributes to the flexibility of labor employment markets.

Moreover, according to the Federal law "On information, information technologies and information security", the legislator classifies information into such that is open to general use and information of limited access (Arts. 7, 9) [8]. The given classification also follows from the content of the Labor code of the Russian Federation, particularly, public is information on labor protection (Arts. 212, 216, 219 of the Code) [12] or nuclear and radiation safety (Art. 369 of the Code) [12], but personal information about the employee (Ch. 14 of the Code) [12] has limited access.

Conclusions

Thus, the analysis of provisions of the Russian Labor code shows that the concept of information is used frequently and it occupies an important place in the legislation. Besides the definition of information, the Labor code also applies the terms “intelligence” and “data”. These concepts are used almost in all institutes of the labor law, as well as in relation to various subjects. Therefore it is possible to classify the definition of information based on institutes and subjects of the labor law, as well as based on availability of information.

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